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CRIME PREVENTION AND CRIMINAL JUSTICE

International cooperation in criminal matters

Note by the Secretariat

By its resolution 1997/26, the Economic and Social Council recommended to the General Assembly the adoption of a draft resolution entitled "International cooperation in criminal matters". The text of the draft resolution is reproduced below.

The General Assembly,

Acknowledging the benefits of the enactment of national laws providing the most flexible basis for extradition, and bearing in mind that some developing countries and countries with economies in transition may lack the resources for developing and implementing treaty relations in extradition, as well as appropriate national legislation,

Bearing in mind that United Nations model treaties on international cooperation in criminal matters provide important tools for the development of international cooperation,

Convinced that existing arrangements governing international cooperation in law enforcement must be continuously reviewed and revised to ensure that the specific contemporary problems of fighting crime are being effectively addressed at all times,

Convinced that reviewing and revising the United Nations model treaties will contribute to increased efficiency in combating criminality,

Commending the work of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996, to implement in part Economic and Social Council resolution 1995/27 of 24 July 1995 by

reviewing the Model Treaty on Extradition[1] and by proposing complementary provisions for it, elements for model legislation in the field of extradition, and training and technical assistance for national officials engaged in the field of extradition,

Commending also the International Association of Penal Law and the International Institute of Higher Studies in Criminal Sciences for providing support for the Meeting and the Governments of Finland, Germany and the United States of America and the United Nations Interregional Crime and Justice Research Institute for their cooperation in the organization of the Meeting,

Recognizing that the work of the Intergovernmental Expert Group could not be fully completed given the limited amount of time available to it and was therefore ultimately limited to the field of extradition,[2]

Determined to implement Economic and Social Council resolution 1995/27, section I, in which the Council requested the Secretary-General to convene a meeting of an intergovernmental expert group that should explore ways of increasing the efficiency of extradition and related mechanisms of international cooperation,

I

MUTUAL ASSISTANCE

1. Requests the Secretary-General to convene, using extrabudgetary funds already offered for this purpose, a meeting of an intergovernmental expert group to examine practical recommendations for the further development and promotion of mutual assistance in criminal matters;

2. Recommends that the expert group should, in accordance with Economic and Social Council resolution 1995/27, section I, explore ways and means of increasing the efficiency of this type of international cooperation, having due regard to the rule of law and the protection of human rights, including by drafting alternative or complementary articles for the Model Treaty on Mutual Assistance in Criminal Matters,[3] developing model legislation and providing technical assistance in the development of agreements;

3. Recommends that the expert group should submit a report on the implementation of the present resolution to the Commission on Crime Prevention and Criminal Justice no later than at its eighth session;

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[1] General Assembly resolution 45/116, annex.

[2] E/CN.15/1997/6 and Corr.1, annex, para. 12.

[3] General Assembly resolution 45/117, annex.

II

EXTRADITION

1. Welcomes the report of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996;[4]

2. Decides that the Model Treaty on Extradition should be complemented by the provisions set forth in the annex to the present resolution;

3. Encourages Member States, within the framework of national legal systems, to enact effective extradition legislation, and calls upon the international community to give all possible assistance in achieving that goal;

4. Requests the Secretary-General to elaborate, in consultation with Member States and subject to extrabudgetary resources, for submission to the Commission on Crime Prevention and Criminal Justice, model legislation to assist Member States in giving effect to the Model Treaty on Extradition, in order to enhance effective cooperation between States, taking into account the elements in the contents of model legislation[5] recommended by the Intergovernmental Expert Group on Extradition;

5. Invites States to consider taking steps, within the framework of national legal systems, to conclude extradition and surrender or transfer agreements;

6. Urges States to revise bilateral and multilateral law enforcement cooperation arrangements as an integral part of the effort to effectively combat constantly changing methods of individuals and groups engaging in organized transnational crime;

7. Urges Member States to use the Model Treaty on Extradition as a basis in developing treaty relations at the bilateral, regional and multilateral level, as appropriate;

8. Urges Member States to continue to acknowledge that the protection of human rights should not be considered inconsistent with effective international cooperation in criminal matters, while recognizing the need for fully effective mechanisms for extraditing fugitives;

9. Invites Member States to consider, where applicable and within the framework of national legal systems, the following measures in the context of the use and application of extradition treaties or other arrangements:

(a) Establishing and designating a national central authority to process requests for extradition;

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[4] E/CN.15/1997/6 and Corr.1, annex.

[5] E/CN.15/1997/6 and Corr.1, annex, para. 1, annex II.

(b) Undertaking regular reviews of their treaty or other extradition arrangements and implementing legislation, as well as taking other necessary measures for the purpose of rendering such arrangements and legislation more efficient and effective in combating new and complex forms of crime;

(c) Simplifying and streamlining procedures necessary to execute and initiate requests for extradition, including the provision to requested States of information sufficient to enable extradition;

(d) Reducing the technical requirements, including documentation, necessary to satisfy the tests for extradition where a person is accused of an offence;

(e) Providing for extraditable offences to extend to all acts and omissions that would be a criminal offence in both States carrying a prescribed minimum penalty and not to be individually listed in treaties or other agreements, particularly with respect to organized transnational crime;

(f) Ensuring effective application of the principle of aut dedere aut judicare;

(g) Paying adequate attention, when considering and implementing the measures mentioned in subparagraphs 9 (b) to (f) above, to furthering the protection of human rights and the maintenance of the rule of law;

10. Encourages Member States to promote, on a bilateral, regional or worldwide basis, measures to improve the skills of officials in order to facilitate extradition, such as specialized training and, whenever possible, secondment and exchanges of personnel, as well as the appointment in other States of representatives of prosecuting agencies or of judicial authorities, in accordance with national legislation or bilateral agreements;

11. Reiterates its invitation to Member States to provide to the Secretary-General copies of relevant laws and information on practices related to international cooperation in criminal matters and in particular to extradition, as well as updated information on central authorities designated to deal with requests;

12. Requests the Secretary-General:

(a) Subject to extrabudgetary resources, to regularly update and disseminate the information mentioned in paragraph 11 above;

(b) To continue to provide advisory and technical cooperation services to Member States requesting assistance in the development, negotiation and implementation of bilateral, subregional, regional or international treaties on extradition, as well as the drafting and application of appropriate national legislation, as necessary;

(c) To promote regular communication and exchanges of information between central authorities of Member States dealing with requests for extradition and

to promote meetings of such authorities on a regional basis for Member States wishing to attend;

(d) To provide, taking into account the recommendations for a training programme[9] contained in the report of the Intergovernmental Expert Group, in cooperation with relevant intergovernmental organizations, with the participation of interested Member States at the intergovernmental organizational meeting referred to in the recommendations and subject to extrabudgetary resources, training for personnel in appropriate governmental agencies and central authorities of requesting Member States on extradition law and practice designed to develop necessary skills and improve communications and cooperation aimed at enhancing the effectiveness of extradition and related practices;

13. Also requests the Secretary-General, subject to extrabudgetary resources and in cooperation with other relevant intergovernmental organizations, the United Nations Interregional Crime and Justice Research Institute and the other institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, to develop appropriate training materials for use in providing to requesting Member States the technical assistance referred to above;

14. Commends the International Institute of Higher Studies in Criminal Sciences for its offer to organize and host a coordination meeting for the purpose of developing the training material referred to in paragraph 13 above, as well as training courses on extradition law and practice;

15. Requests the Secretary-General to ensure the full implementation of the provisions of the present resolution and urges Member States and funding agencies to assist the Secretary-General in implementing the present resolution through voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund;

16. Also requests the Secretary-General to submit the report on the Intergovernmental Expert Group Meeting on Extradition, together with the present resolution, to the Preparatory Committee on the Establishment of an International Criminal Court for consideration.

ANNEX

Complementary provisions for the Model Treaty on Extradition

Article 3

1. Move footnote 9 into the text of paragraph (a) at the end of the existing paragraph.

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[9] E/CN.15/1997/6 and Corr.1, annex, para. 1, annex III.

2. Add new footnote to paragraph (a): "Countries may wish to exclude certain conduct, e.g. acts of violence, such as serious offences involving an act of violence against the life, physical integrity or liberty of a person, from the concept of political offence".

3. Add to footnote 10 to paragraph (e): "Countries may also wish to restrict consideration of the issue of lapse of time to the law of the requesting State only or to provide that acts of interruption in the requesting State should be recognized in the requested State".

Article 4

4. Add footnote to paragraph (a): "Some countries may also wish to consider, within the framework of national legal systems, other means to ensure that those responsible for crimes do not escape punishment on the basis of nationality, such as, inter alia, provisions that would permit surrender for serious offences, or permit temporary transfer of the person for trial and return of the person to the requested State for service of sentence".

5. Add to paragraph (d) the same aut dedere aut judicare provisions as are found in paragraphs (a) and (f).

Article 5

6. Replace the existing footnote 14 to paragraph 2 (b) with the following: "Countries requiring evidence in support of a request for extradition may wish to define the evidentiary requirements necessary to satisfy the test for extradition, and in doing so should take into account the need to facilitate effective international cooperation".

7. Add a new footnote to article 5: "Countries may wish to consider including the most advanced techniques for the communication of requests, means which could none the less establish the authenticity of the documents as emanating from the requesting State".

Article 6

8. Add a footnote to article 6: "Countries may wish to provide for the waiver of speciality in the case of simplified extradition".

Article 14

9. Eliminate footnote 16 to paragraph 1 (b).

10. Add a new footnote to paragraph 1 (a): "Countries may also wish to provide that the rule of speciality is not applicable to extraditable offences provable on the same facts, and carrying the same or a lesser penalty as the original offence for which extradition was requested".

11. Add a footnote to paragraph 2: "Countries may wish to waive the requirement for the provision of some or all of these documents".

Article 15

12. Add to footnote 18 to paragraph 2: "However, countries may wish to provide that transit should not be denied on the basis of nationality".

Article 17

13. Add to footnote 19 to paragraph 2: "There may also be cases for consultations between the requesting and requested States for the payment by the requesting State of extraordinary costs, particularly in complex cases where there is a significant disparity in the resources available to the two States".